

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.781/2004

New Delhi, this the 28th day of January, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Dinesh Kumar
S/o Shri Bhadra Pal Singh
R/o 1/37, Sector-2
Rajinder Nagar (Ghaziabad). ... Applicant

(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Commissioner of Police
Police Headquarters
MSO Building, IP Estate
New Delhi.
2. Joint Commissioner of Police,
Armed Police
PHQ, MSO Building, PHQIP Estate
New Delhi.
3. Inquiry Officer
DCP, Traffic (NR), Delhi. ... Respondents

(By Advocate: Sh. Harvir Singh)

O R D E R(Oral)

By Mr. Justice V.S.Aggarwal:

Applicant joined Delhi Police as Constable. By virtue of the impugned order passed by the disciplinary authority, which has been upheld by the appellate authority, he has been dismissed from service. By virtue of the present application, he seeks to assail the orders referred to above.

2. The applicant had been served with the following charge:

"You, ASI Mange Ram Sharma
No.3446/D, HC Veer Pal Singh, No.296/T/Ct.
Sanjeev Kumar 3475/T, Ct. Yashvir Singh,
No.3014/T and Ct. Dinesh Kumar No.704/T are

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hereby charged that while posted in Seemapuri Traffic Circle Delhi on 3/12/2000 you were found present at Mandoli Chungi Red Light point Wazirabad Road alongwith two DHG constable namely Rambir Singh, No.7826/DHG and Vinod Kumar No.7829/DHG and one private person namely Devender Kumar Agarwal s/o Sh. Jai Parkash Agarwal c/o Sh. Vinod Singhal, 20 Foota Road Partap Nagar, Siboli, Nand Nagri, Delhi. All you three traffic constables with the DHG were standing on Central Verge. They signaled truck No.HR-37-3475 to stop at about 12 noon. You Ct. Sanjeev Kumar approached the truck and asked the driver Mohd. Ahtegsham s/o Bash Ahmed r/o Vill: Gana Khari P.O. Guna Distt, Sharanpur (UP) to come down from the truck and took him to the Z.O. You Z.O. ASI Mange Ram Sharma challaned him vide challan No.L-907835 u/s 29RRR.177 MV Act and demanded Rs.150/- (Rs.100/- for compounding amount and Rs.50/- entry fee). You HC Veer Pal Singh who were also standing with the ZO near traffic booth, obtained the said amount from the truck driver and handed over Rs.50/- to the ZO and Rs.100/- to the aforesaid Mr. Devender for safe custody to avoid recovery from your person in the event of Raid. The PRG team caught all of you red handed on the spot. Signed GC note of Rs.50/- denomination was recovered from the right side pocket of shirt of you ZO Mange Ram which was kept alongwith Rs.2800/- found in your person. On further enquiry it was established that you ZO had challaned a certain number of vehicles during the last 2 days and cash amount should have been Rs.2900/- But here the amount was Rs.2800/- plus signed note of Rs.50/- denomination. An amount of Rs.1780/- including signed GC note of Rs.100/- denomination was recovered from the right side pant pocket of Sh. Devender Kumar stuffed in an haphazard and inorderly manner from which it could be included that the amount had been given to him by you above mentioned traffic staff by collecting illegally from commercial vehicles. You ZO ASI Mange Ram alongwith above traffic staff, DHG constables and private person Mr. Devender Kumar had assembled at the spot with common malafide intention of collecting illegal entry money from the commercial vehicles.

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Further you ASI Mange Ram had threatened the truck driver Mohd. Ahtegsham of dire consequences if he deposed against all of you. Overawed by the threat, the said truck driver did not turn up to depose against you during the enquiry proceedings.

The above act/acts on the part of you ASI Mange Ram No.3446/D, you HC Veer Pal Singh No.296/T, you Ct. Yashvir Singh No.3014/T, you Ct. Sanjeev Kumar, No.3475/T and you Ct. Dinesh Kumar No.704/T amount to gross misconduct, negligence, malafide and dereliction in the discharge of your official duties which render you liable to be punished under the provisions of Delhi Police (Punishment & Appeal) Rules, 1980."

3. Inquiry Officer had been appointed and he returned findings stating that the charge stood proved against the applicant. At this stage, we deem it necessary to mention that we are only concerned with the act and conduct of the applicant and nothing said herein should be taken as an expression of opinion pertaining to other co-delinquents.

4. The Original Application is being contested.

5. Learned counsel for the applicant urged that there is no material against the applicant to state that he was a party to the alleged dereliction of duty pertaining to collection of certain amounts illegally, which we have reproduced in the charge above. This is being denied by the respondents.

6. In a departmental proceedings, it is not in dispute that findings can be arrived at on preponderance of probabilities. The strict rule of proof beyond any shadow of doubts available in criminal trial is not applicable in departmental proceedings. All

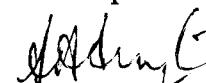
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the same, in a Society governed by rule of law, the findings have to be based on some material. It cannot be a total guess work or a finding, which no reasonable person can arrive at.

7. The evidence collected by the Inquiry Officer was read to us from the report. There was no evidence that the applicant, who was present, was in any way connected with the stopping of the vehicle or collecting the illegal amount. There is no other act on his part in this regard. When no witness attributes any act, then mere presence, in the absence of any other material to show complicity, will not make the applicant liable.

8. In certain cases, persons can show complicity but in the present case, the same is absent because the applicant with another Constable was simply present at Mandoli Chungi. It was some other Constable, who approached the truck and thereafter collection was made by some other person regarding which no opinion need to be expressed to caste prejudice in anybody's matter. The net result could be that there is no material to state that the applicant was, in any way, connected with an act of the others and once there is no evidence in this regard, indeed, the impugned orders cannot be sustained.

9. For these reasons, we **allow** the present application and quash the impugned orders. Since the impugned orders issued are based on 'no evidence', the applicant would be entitled to consequential benefits.


(S.A.Singh)
Member (A)


(V.S. Aggarwal)
Chairman